

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Operating permit program approvals under section 502 of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal operating permit program approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning operating permit programs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 27, 1994.

Robert Springer,

Acting Regional Administrator.

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40 CFR Part 300

[FRL-5090-1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Northwestern States Portland Cement Company (NWSPCC) Site, Mason City,

Iowa from the National Priorities List: Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA), Region VII announces its intent to delete the NWSPCC Site, Mason City, Iowa from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The reason this action is being taken is that Superfund Remedial Activities have been completed and no further response is appropriate.

DATES: Comments concerning this site may be submitted on or before November 18, 1994.

ADDRESSES: Comments may be mailed to: Michael J. Sanderson, Acting Director, Waste Management Division, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Comprehensive information on this site is available through the EPA Region VII public docket, which is located in the EPA's Region VII office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the Regional public docket should be directed formally to the EPA Region VII docket office.

The address for the Regional docket office is: U.S. Environmental Protection Agency, Region VII 726 Minnesota Avenue, Kansas City, Kansas 66101.

Background information from the Regional public docket is also available for viewing at the NWSPCC Site information repository which is located with: Mason City Public Library, 225 2nd SE., Mason City, IA 50401.

FOR FURTHER INFORMATION CONTACT: Paul Roemerma, U.S. Environmental Protection Agency, Region VII 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551-7694.

SUPPLEMENTARY INFORMATION:**Table of Contents:**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA), Region VII announces its intent to delete the NWSPCC Site, Mason City,

Iowa, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Fund (Fund). Pursuant to § 300.425(e)(3) of the National Contingency Plan (NCP), any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after the publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that the EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, will consider whether any of the following criteria have been met:

(i) That responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Section 300.425(e)(2) of the NCP requires State concurrence before deleting a site from the NPL.

Deletion of sites from the NPL does not itself create, alter, or revoke any individuals rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As is mentioned in Section II of this document, § 300.425(e)(3) of the NCP makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

III. Deletion Procedures

The EPA Region VII will accept and evaluate public comments before making the final decision to delete the site from the NPL. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of the site.

1. The EPA Region VII has recommended the deletion and prepared the relevant documents.
2. The State of Iowa has concurred with the deletion decision.
3. Concurrent with this National Notice of Intent to Delete a notice has been published in local and community newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package, which starts November 3, 1994, and which will conclude on December 5, 1994.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete is made. The Region will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion will occur after the Regional Administrator places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region VII.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Northwestern States Portland Cement Company Site, Mason City, Iowa, from the NPL.

Northwestern States Portland Cement Company (NWSPCC), owns and operates a cement manufacturing facility on the north side of Mason City, Iowa. The facility has been in operation since 1908. A byproduct of the cement manufacturing process since 1969 is cement kiln dust (CKD). The West Quarry site (Site) is a quarry covering approximately 150 acres to a depth of 40 feet of which approximately 110 acres were filled with CKD during the period of 1969-1985.

A pH monitoring program of the water in the West Quarry was started in April of 1974 in response to a change in color of the Quarry water. The Quarry water pH rose sharply following January 1976, increased to 11.8 in April 1976, and leveled off at about 12.5 in 1980. The increase in pH is attributed to the breakdown of the natural buffering system which was sustaining the Quarry water at a near-neutral pH. In response to Quarry dewatering initiated in 1987, current pH levels are about 10.5.

In 1979, two seeps emerged from the northeastern portion of the filled West Quarry. High pH water from the seeps flowed overland to Calmus Creek. In 1984, the state initiated a study of Calmus Creek and found pH in the creek elevated 2.0 pH units downstream of the seep area. In April 1985, the state ordered NWSPCC to immediately cease discharge from the seep area to Calmus Creek. NWSPCC was also ordered to cease kiln dust disposal in the Quarry and to conduct a hydrogeologic investigation.

In 1989, the state did a follow-up stream survey of Calmus Creek. The 1989 study concluded that there had been no improvement in water quality since the 1984 study. Conclusions from the 1989 study suggested that runoff from the haul roads and storage areas was contributing to the water quality degradation.

In 1992, a Calmus Creek stream study was done to meet requirements of the National Pollutant Discharge Elimination permit issued by Iowa Department of Natural Resources. The results of this study suggested water quality had improved with pH dropping from 10.2 in earlier studies to 7.9. The study attributed this improvement to elimination of runoff from the site and the installation of the groundwater extraction/treatment system installed in 1985.

In 1987, EPA conducted a Site Inspection of the NWSPCC Site and, based on the findings of this investigation, the Site was scored with the Hazard Ranking System (HRS) for possible inclusion on the National Priorities List (NPL). Based on the site characterization completed under the direction of EPA, an HRS package for the Site resulted in a score of 57.80. This score was based on the impact to groundwater and direct human contact. The Site was proposed for the National Priority List (NPL), in June of 1988 (53 FR 23988). The Site was added to the NPL in August of 1990 (55 FR 35501).

The RI/FS field work and data collection activities began in August 1988 with the final report submitted in March 1990. The investigation

demonstrated that significant impact to groundwater outside the Site boundaries had not occurred.

The U. S. Public Health Service Agency for Toxic Substances and Disease Registry (ATSDR), conducted a draft Health Assessment for the NWSPCC Site. They concluded that the Site is of potential health concern because of the potential risk to human health resulting from possible exposure to hazardous substances at concentrations that may result in adverse health effects.

A final Record of Decision (ROD), was executed in June 1990 by the EPA with concurrence by IDNR. The selected response action addressed the principal threats of surface water and groundwater contamination and the source of contamination—the cement kiln dust. The selected remedy consisted of the following actions.

- Dewatering of the Site which contained high pH water, acid-neutralization and discharge to Calmus Creek.
- Construction of a permanent drain system in the dewatered Site to collect precipitation runoff and groundwater inflow to the quarry.
- Placement of an engineered clay cap over the area of the Site filled with cement kiln dust to minimize infiltration through the kiln dust.
- Installation of bedrock dewatering wells to collect contaminated groundwater beneath the Site, prevent migration of contaminated groundwater from the Site and maintain groundwater levels below the kiln dust.
- Treatment of contaminated water to meet IDNR/NPDES discharge permit limits with discharge to Calmus Creek.
- Assurances that the dewatering system will be operated in perpetuity to maintain isolation of water from the waste kiln dust and collect and treat any contaminated water which is generated.

A Consent Decree was signed in June 1990 which outlined the performance criteria to be met by implementing the approved remedial action alternative as well as the reporting and scheduling requirements of the remedial design and construction activities. The final Remedial Design and Remedial Action Work Plans were completed in June 1992.

The EPA in consultation with the State of Iowa, has determined that all fund-financed response activities under CERCLA at the NWSPCC Site, Mason City, Iowa, have been completed and that no further response is necessary. Therefore, it is proposed to delete the Site from the NPL.

Dated: September 26, 1994.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 94-25869 Filed 10-18-94; 8:45 am]

BILLING CODE 6500-50-P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

RIN 1090-AA29

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior is initiating a biennial review of the regulations for assessing natural resource damages resulting from a discharge of oil into navigable waters under the Clean Water Act or a release of a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act. The regulations provide procedures that Federal, State, and Indian tribe natural resource trustees may use to obtain compensation from potentially responsible parties for injuries to natural resources. The regulations provide an administrative process for conducting assessments as well as two types of technical procedures for the actual determination of injuries and damages. "Type A" procedures are standard procedures for simplified assessments requiring minimal field observation in cases of minor discharges or releases in certain environments. "Type B" procedures are site-specific procedures for detailed assessments in other cases. This advance notice solicits comment on how the administrative process and all but one of the type B procedures should be revised.

DATES: Comments will be accepted through January 17, 1995.

ADDRESSES: Comments should be sent in duplicate to the Office of Environmental Policy and Compliance, ATTN: NRDA Rule—Biennial Review, Room 2340, Department of the Interior, 1849 C Street NW., Washington, DC 20240, telephone: (202) 208-3301 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Stephen F. Specht at (202) 208-3301, or SSPECHT@IOS.DOI.GOV on Internet.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

- I. Statutory Provisions
- II. Overview of the Department's Natural Resource Damage Assessment Regulations
 - A. Preassessment Phase
 - B. Assessment Plan Phase
 - C. Assessment Phase
 - D. Post-Assessment Phase
- III. Related Rulemakings
- IV. Potential Topics for Review
 - A. Administrative Process
 - B. Injury
 - C. Economics
 - D. Legal Topics
 - E. Restoration, Rehabilitation, Replacement, and/or Acquisition of Equivalent Resources

I. Statutory Provisions

This notice announces the commencement of a review of regulations for assessing natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 et seq.) (CERCLA) and the Clean Water Act, as amended (33 U.S.C. 1251 et seq.) (CWA). Under CERCLA, certain categories of potentially responsible parties (PRPs) are liable for natural resource damages resulting from a release of a hazardous substance. CERCLA sec. 107(a). Natural resource damages are monetary compensation for injury to, destruction of, or loss of natural resources. CERCLA sec. 107(a)(4)(C). CWA creates similar liability for natural resource damages resulting from discharges of oil into navigable waters. CWA sec. 311(f).

Only designated natural resource trustees may recover natural resource damages. CWA recognizes the authority of Federal and State officials to serve as natural resource trustees. CERCLA recognizes the authority of Federal and State officials as well as Indian tribes to act as natural resource trustees. CERCLA defines "State" to include:

The District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the United States has jurisdiction. CERCLA sec. 101(27).

Damages may be recovered for those natural resource injuries that are not fully remedied by response actions as well as public economic values lost from the date of the discharge or release until the resources have fully recovered. All sums recovered in compensation for natural resource injuries must be used to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources. CERCLA sec.

107(f)(1). Trustee officials may also recover the reasonable costs of assessing natural resource damages.

CERCLA requires the promulgation of regulations for the assessment of natural resource damages resulting either from a discharge of oil into navigable waters under CWA or from a release of a hazardous substance under CERCLA. CERCLA sec. 301(c)(1). These regulations are to identify the "best available" procedures for assessing natural resource damages. CERCLA sec. 301(c)(2). CERCLA requires that the natural resource damage assessment regulations include two types of assessment procedures. "Type A" procedures are "standard procedures for simplified assessments requiring minimal field observation." CERCLA sec. 301(c)(2)(A). "Type B" procedures are "alternative protocols for conducting assessments in individual cases." CERCLA sec. 301(c)(2)(B). Assessments performed by Federal and State trustee officials in accordance with the natural resource damage assessment regulations receive a rebuttable presumption in court. CERCLA sec. 107(f)(2)(C). The promulgation of these regulations was delegated to the Department of the Interior (the Department). E.O. 12316, as amended by E.O. 12580.

The natural resource damage provisions of CWA were amended by the Oil Pollution Act (33 U.S.C. 2701 et seq.) (OPA). The authority to sue for natural resource damages resulting from discharges of oil into navigable waters was extended to not only Federal and State natural resource trustees but also Indian tribe and foreign natural resource trustees. OPA also authorized the National Oceanic and Atmospheric Administration (NOAA) to develop new natural resource damage assessment regulations for discharges of oil into navigable waters. The Department is coordinating its rulemakings with NOAA to ensure, to the maximum extent appropriate, that consistent processes are established for assessing natural resource damages under CERCLA and OPA.

OPA provides that any rule in effect under a law replaced by OPA will continue in effect until superseded. OPA sec. 6001(b). In particular, Senate committee report language makes it clear that "[t]he existing Interior Department rules * * * may be used with a rebuttable presumption in the interim" until NOAA promulgates new regulations. S. Rep. No. 101-94, 101st Cong., 1st Sess. 15 (1990). Therefore, until NOAA promulgates its regulations, the Department's regulations may be used to obtain a rebuttable presumption